

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 158 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 Yes

2 to 5 No

COMMISSIONER OF INCOME TAX

Versus

ASHABEN ROHITBHAI

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.R.DAVE

Date of decision: 09/02/99

ORAL JUDGEMENT (per A.R. Dave, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred for opinion of this Court the following questions of law under the provisions of sec. 256(1) of the Income-tax Act, 1961.

"1. Whether the Income Tax Appellate Tribunal

has been right in law in holding that while working out the cost of acquisition on sale of shares of Rajesh Textile Mills, depreciation in the value of shares of Sayaji Mills Ltd. at Rs. 108.75 per share required to be allowed?

2. Whether, on the facts of the case, the

direction to the Income-tax Officer to compute the capital gain by allowing deduction for depreciation in the value of shares of Sayaji Mills Ltd. at Rs. 108.75 per share as part of the cost of shares sold, is correct in law?"

2. The circumstances in which the above-referred questions have been referred to this Court are as under:-

3. The assessee was owner of certain shares of Sayaji Mills Ltd. and on the basis of her holding of Sayaji Mills Ltd. she was allotted shares of Rajesh Textile Mills Ltd. Upon allotment of shares of Rajesh Textile Mills Ltd., the market value of shares of Sayaji Mills Ltd. had declined and therefore in the matter of calculation of capital gain, while selling shares of Rajesh Textile Mills, the assessee had claimed deduction of depreciation in the value of shares of Sayaji Mills Ltd. The Tribunal was of the view that depreciation in value of the shares of Sayaji Mills Ltd. should be considered and therefore, being aggrieved by the said order, the Revenue had approached the Tribunal for making a reference.

4. The questions referred to hereinabove are no more res integra in view of the judgment delivered by the Hon'ble Supreme Court in the case of Miss Dhun Kapadia v. CIT, reported in 63 ITR 651 and also in view of opinion rendered by this Court in ITR No. 420/83 in the matter of CIT v. Suhashbhai Vadilal.

5. In view of the fact that similar questions were decided in favour of the assessee and as facts are same, in the instant case, following the judgments referred to hereinabove, we answer both the questions referred to us in affirmative, that is, against the Revenue and in favour of the assessee. The reference stands disposed of with no order as to costs.

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